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E-filing

08 APR 11 PM 3:15
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Federal Defendant Dr. Elena Furrow

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MALINDA DOTSON,

Plaintiff,

v.

ST. JOSEPH HOSPITAL OF EUREKA;
FRANK ZAZUETA, M.D.; MEGAN E.
HAMREUS, D.O.; CHRISTOPHER
WALLACE, M.D.; ALEXANDER
STRACHAN, M.D.; WILLIAM KOCH,
M.D.; ELENA FURROW, M.D.; AND
DOES 1 THROUGH 25, INCLUSIVE,

Defendants.

CASE NO.

08 1861
NOTICE OF REMOVAL

JCS

TO: Clerk, Superior Court of California
County of Humboldt
825 Fifth Street
Eureka, CA 95501

James A. Zito, Esq.
Law Offices of James A. Zito
611 "L" Street, Suite A
Eureka, CA 95501

PLEASE TAKE NOTICE that on this day Case No. DR 07 0820 pending in Humboldt
County Superior Court is being removed to the United States District Court for the Northern District

NOTICE OF REMOVAL
Dotson v. St. Joseph Hospital, et al.

1 of California, pursuant to 28 U.S.C. §§ 1441(a), 1441(b), 1441(f), 2679(d)(2), and 42 U.S.C. §§ 233,
2 et seq. on behalf of federal defendant Dr. Elena Furrow. Upon direction by the Attorney General of
3 the United States and pursuant to 28 U.S.C. § 1446, the undersigned attorneys hereby present the
4 following facts to the Judges of the United States District Court for the Northern District of
5 California.

6 1. On October 25, 2007, plaintiff filed a personal injury medical malpractice suit in
7 Humboldt County Superior Court against federal defendant Dr. Elena Furrow, an employee of Eureka
8 Community Health Center, a clinic operated by Open Door Community Health Center. Plaintiff
9 alleges that Dr. Elena Furrow failed to properly diagnose and treat her.

10 2. On or about February 18, 2008, Dr. Elena Furrow received a copy of the summons and
11 complaint. As of this date, the United States Attorney's Office has not been served pursuant to
12 Rule 4, Fed R. Civ. Proc. Copies of the state court pleadings are attached hereto as Exhibit A, which
13 constitute the only process or pleading which have been received. No trial has been had in this
14 action.

15 3. This action must be removed to federal district court pursuant to 42 U.S.C. § 233(c) of the
16 Federally Supported Health Centers Assistance Act, because the action is against Dr. Elena Furrow,
17 an employee of Eureka Community Health Center, a clinic operated by Open Door Community
18 Health Center. Open Door Community Health Center is a federally deemed health center. Pursuant
19 to the Federally Supported Health Centers Assistance Act, the health center and its employees are
20 covered under the Federal Tort Claims Act ("FTCA"). The FTCA is the exclusive remedy for alleged
21 negligent actions caused by employees of a deemed health center.

22 4. This action must also be removed to federal district court pursuant to 28 U.S.C.
23 § 2679(d)(2), because it is an action against Dr. Elena Furrow, who was acting within the course and
24 scope of her employment during the time alleged in the complaint. Upon certification by the
25 Attorney General, the action shall be removed to the District Court at any time prior to trial. Pursuant
26 to written delegation from Joseph P. Russoniello, the duly appointed United States Attorney for the
27 Northern District of California, the Chief of the Civil Division has been authorized to exercise on
28

1 behalf of the United States Attorney the authority vested in him by the Attorney General, pursuant to
2 28 C.F.R. § 15.3. The Chief of the Civil Division has certified that Dr. Elena Furrow was acting
3 within the course and scope of her employment with the Open Door Community Health Center. See
4 Certification Pursuant to 28 U.S.C. § 2679(d). This certification is conclusive for purposes of
5 removal. 28 U.S.C. § 2679(d)(2).

6 5. Upon removal the United States is automatically substituted for federal defendant
7 Dr. Elena Furrow. This action will proceed as an action against the United States of America
8 pursuant to 28 U.S.C. § 1346(b) subject to the limitations and exceptions applicable to those actions.
9 28 U.S.C. § 2679(d)(4).

10 6. A copy of this Notice is being filed with the Clerk of the Humboldt County Superior Court.
11 That filing will automatically effect the removal of the action in its entirety to this Court for all future
12 proceedings.

13 Respectfully submitted,

14 JOSEPH P. RUSSONIELLO
15 United States Attorney

16
17 DATED: April 07, 2008

18 By: Melissa K. Brown
19 MELISSA K. BROWN
20 Assistant United States Attorney
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SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

ST. JOSEPH HOSPITAL OF EUREKA; FRANK ZAZUETA, M.D.;
MEGAN E. HAMREUS, D.O.; CHRISTOPHER WALLACE, M.D.;
ALEXANDER STRACHAN; WILLIAM KOCH, M.D.; & DOES 1 - 25
ELENA FURLOW, MD

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MALINDA DOTSON

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF HUMBOLDT COUNTY, CALIFORNIA
825 - FIFTH STREET
EUREKA, CALIFORNIA 95501

CASE NUMBER
(Número del caso): **PRO70820**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
LAW OFFICE OF JAMES A. ZITO, 611 "L" STREET, SUITE A, EUREKA, CALIFORNIA 95501,
(707) 269-0743
DWIGHT W. CLARK

DATE: *OCTOBER 25, 2007*

(Fecha)

Clerk, by DONNA W

(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

(REAL)

COPY

FILED

OCT 25 2007

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

DONNA W

James A. Zito, Esq., SB 96272
LAW OFFICE OF JAMES A. ZITO
611 "L" Street, Suite A
Eureka, CA 95501
TEL. (707) 269-0743
FAX (707) 269-0220

Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

MALINDA DOTSON,

Plaintiff,

vs.

ST. JOSEPH HOSPITAL OF EUREKA;
FRANK ZAZUETA, M.D.;
MEGAN E. HAMREUS, D.O.;
CHRISTOPHER WALLACE, M.D.;
ALEXANDER STRACHAN, M.D.;
WILLIAM KOCH, M.D.;
ELENA FURROW, M.D.; and
DOES 1 through 25, Inclusive,

Defendants.

Case No.

DR070826

COMPLAINT FOR PROFESSIONAL
NEGLIGENCE

Plaintiff alleges as follows:

FIRST CAUSE OF ACTION

(Medical Negligence Against all Defendants)

1. Plaintiff is an individual, and for all times mentioned herein was a resident of Humboldt County, California.

2. Defendant ST. JOSEPH HOSPITAL OF EUREKA, an entity, on information and belief a corporation, is organized and existing under the laws of the State of California, with its principal place of business in Humboldt County, California. Defendant FRANK ZAZUETA, M.D., on information and belief, is an individual and a medical doctor practicing in Humboldt County, California. It is unknown if this defendant was an employee of co-defendants, or an independent contractor. Defendant MEGAN E. HAMREUS, D.O., on information and belief, is

1 an individual and a medical doctor practicing at all times relevant herein in Humboldt County,
 2 California. It is unknown if this defendant was an employee of co-defendants, or an
 3 independent contractor. Defendant CHRISTOPHER WALLACE, M.D., on information and
 4 belief, is an individual and a medical doctor practicing at all times relevant herein in Humboldt
 5 County, California. It is unknown if this defendant was an employee of co-defendants, or an
 6 independent contractor. Defendant ALEXANDER STRACHAN, M.D., on information and belief,
 7 is an individual and a medical doctor practicing at all times relevant herein in Humboldt County,
 8 California. It is unknown if this defendant was an employee of co-defendants, or an
 9 independent contractor. Defendant WILLIAM KOCH, M.D., on information and belief, is an
 10 individual and a medical doctor practicing in Humboldt County, California. It is unknown if this
 11 defendant was an employee of co-defendants, or an independent contractor. Defendant
 12 ELENA FURROW, M.D., on information and belief, is an individual and a medical doctor
 13 practicing in Humboldt County, California. It is unknown if this defendant was an employee of
 14 co-defendants, or an independent contractor.

14 3. The true names and capacities of defendants DOES 1 - 25, inclusive, are
 15 unknown to plaintiff at this time. Plaintiff sues those defendants by such fictitious names
 16 pursuant to section 474 of the Code of Civil Procedure. Plaintiff is informed and believes, and
 17 based on that information and belief alleges, that each of the defendants designated as a DOE
 18 is negligently or otherwise legally responsible for the events and happenings referred to in this
 19 Complaint, and negligently or otherwise unlawfully caused the injuries and damages to plaintiff
 20 as alleged in this Complaint.

21 4. Plaintiff is informed and believes, and based on that information and belief alleges,
 22 that at all times mentioned in this Complaint, defendants were the agents and employees of
 23 their codefendants, and in doing the things alleged in this Complaint were acting within the
 24 course and scope of such agency and employment.

25 5. The injury upon which this action is based occurred in Humboldt County,
 26 California.

27 6. Due notice of plaintiff's intent to bring this action was mailed to the defendants on
 28 August 2, 2007, in accordance with Section 364 of the California Code of Civil Procedure.

1 7. At all times herein mentioned defendants and each of them were and now are
2 health care providers as defined by the applicable California codes.

3 8. Defendants and each of them at all times herein mentioned held themselves out to
4 the public at large and to plaintiff, in particular, as fully qualified health care providers, duly
5 licensed to practice their profession in the State of California, and exercising prudent,
6 reasonable judgment and care in the performing of services, examinations, diagnosis, testing
7 and caring for plaintiff.

8 9. At all times herein mentioned plaintiff was in the control of defendants and each of
9 them and at no time prior to the events, conduct, activity, care and treatment as herein
10 complained of did defendants, or one or more of them, obtain plaintiff's knowledgeable,
11 informed consent for the care, treatment or conduct as herein alleged, and that prior to the
12 initiation of or performance of said care, treatment, procedure or conduct, no opportunity was
13 afforded to plaintiff herein to exercise voluntary, knowledgeable and informed consent to said
14 care, treatment, procedure or conduct.

15 10. That the care and treatment performed by defendants and each of them upon
16 plaintiff negligently failed to conform to the standard of care both with respect to diagnosing
17 plaintiff's medical condition and as to the risks and hazards, or other harmful consequences,
18 that might follow from the treatment or diagnosis planned for plaintiff and the type of treatment
19 and medical therapy performed upon plaintiff.

20 11. Commencing on or about August 5, 2006, defendants and each of them so
21 negligently treated, examined, tested, diagnosed and cared for plaintiff while plaintiff was in the
22 control of defendants for medical treatment and therapy and so negligently managed,
23 maintained, selected, designed, controlled and conducted their services and activities in
24 connection with plaintiff's medical treatment, therapy and care, that the same proximately
25 caused the injuries, damages and detriment to plaintiff as herein alleged. Specifically while
26 defendants were providing plaintiff medical care and treatment, defendants and each of them
27 failed to adequately examine, test, diagnose, and treat plaintiff for a deep vein thrombosis.

28 12. Plaintiff first became aware of defendants' negligence on or about September,
2006.

1 13. As a direct and proximate result of the carelessness and negligence of defendants
 2 as set forth above, plaintiff was injured in body and in health, strength and activities, all of which
 3 have caused and continue to cause, plaintiff great mental, emotional, physical, psychological,
 4 nervous pain and suffering. Plaintiff is informed and believes and thereon alleges that some or
 5 all of said injuries will be of a permanent nature and will result in some permanent disability to
 6 plaintiff, all to plaintiff's general damage in a sum within the jurisdiction of this court.

7 14. As a further direct and proximate result of the negligence of defendants, and each
 8 of them, plaintiff was required to, and did, employ medical treatment for plaintiff's injuries and
 9 has incurred medical bills, and will in the future, according to proof.

10 **WHEREFORE** plaintiff prays for judgment against defendants as follows:

- 11 1. Non-economic (general) damages according to proof;
- 12 2. Economic (special) damages according to proof;
- 13 3. Interest according to law
- 14 4. Costs of the action;
- 15 5. Any other and further relief that the court considers proper.

16 Dated: October 25, 2007.

LAW OFFICE OF JAMES A. ZITO

17 By: 

18 James A. Zito, Attorney for Plaintiff